

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PARISH GOLDEN,

Plaintiff,

ORDER

v.

11-cv-616-bbc

WILLIAM POLLARD, MICHAEL BAENEN,
PETE ERICKSEN, LT. STUTLEEN,
CO II RAUSCH, CO II FRISCH,
CO II BIEMERET, CO II DEBROUX and
JOHN DOES 1-10,

Defendants.

Plaintiff Parish Golden, a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint in forma pauperis, plaintiff will have to make an initial partial payment of the filing fee. The initial partial payment is calculated by using the method established in 28 U.S.C. § 1915, that is, by figuring 20% of the greater of the average monthly balance or the

average monthly deposits to the plaintiff's trust fund account statement. From the trust fund account statement that plaintiff has submitted, the greater of these two amounts is the average monthly balance, which is \$535.19. From the trust fund account statement plaintiff has submitted, I calculate his initial partial payment to be \$107.04. Also, he must pay the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If plaintiff does not have the money in his regular account to make the initial partial payment, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$107.04 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware that they should send plaintiff's initial partial payment to this court.

Along with his complaint, plaintiff has also filed a motion for use of release account funds, dkt. #4. In his motion, plaintiff asks that the court issue an order directing the business office at Green Bay Correctional Institution to use his release account funds to pay the initial partial filing fee in this case. He also asks that the outstanding filing fees in closed cases 09-cv-150 and 09-cv-442 be paid using his release account funds. Plaintiff's motion

will be granted with respect to the filing fee in this case, but denied with respect to the filing fees in his other cases. Plaintiff may not use his release account to pay the outstanding fees in closed cases 09-cv-150 and 09-cv-442. The language in 28 U.S.C. § 1915(b)(1) indicates that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, with the exception of initial partial payments, this court does not have the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from his release account.

ORDER

IT IS ORDERED that

1. Plaintiff Parish Golden is assessed \$107.04 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$107.04 on or before September 30, 2011. If, by September 30, 2011, plaintiff fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

2. Plaintiff's motion for use of release account funds, dkt. #4 is GRANTED in

part and DENIED in part. Plaintiff's \$107.04 initial partial payment in this case may be taken from his release account, but the outstanding filing fees in cases 09-cv-150 and 09-cv-442 may not be taken from his release account.

Entered this 8th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge